

MINUTES OF SPECIAL MEETING  
CASS COUNTY JOINT WATER RESOURCE DISTRICT  
CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
MAY 18, 2016

The Cass County Joint Water Resource District met on May 18, 2016, at 8:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Mark Brodshaug and Dan Jacobson, Southeast Cass Water Resource District; Rodger Olson, Maple River Water Resource District (by phone); Ken Lougheed, North Cass Water Resource District (by phone); Jacob Gust, Rush River Water Resource District; Carol Harbeke Lewis, Secretary-Treasurer; Michelle Anderson, Administrative Assistant; Sean M. Fredricks, Chris McShane and Lukas Andrud, Attorneys for the Board; Eric Dodds and Tanaya Reitz, Advanced Engineering and Environmental Services, Inc. (by phone); and Terry Sauvageau, Horace resident.

**Metro Flood Diversion Project / land acquisition**

Chris McShane presented Resolutions relating to land acquisition for OIN #1096, #1097 and #230 regarding construction of the diversion inlet structure by the Corps of Engineers in the fall of 2016. The Corps of Engineers has been working with the Office of the State Engineer to obtain the permit for construction. The deadline for the State Water Commission to issue a timely permit is June 30, 2016. Three properties were identified as a priority at this time for the diversion inlet structure and the associated realignment of Cass County Highways 16 and 17.

At the previous meeting, Chris McShane, Terry Williams, Jason Benson, Eric Dodds and Tanaya Reitz presented and reviewed The *Diversion Inlet Control Structure Lands Acquisition Update*. The Corps of Engineers intends to begin construction on the diversion inlet structure, located south of Horace, in the fall of 2016. Ms. Williams, Mr. Benson and Mr. Dodds outlined the acquisition of 3 properties needed for construction of the inlet structure and realignment of Cass County Highways 16 and 17. These 3 properties have been identified as a priority at this time to accommodate the Corps of Engineers construction schedule. Ms. Williams explained the Corps of Engineers is working with the State Water Commission to obtain the permits and intends to open proposals from interested contractors in mid-July so they can award contracts in October. Mr. Dodds stated the State Water Commission will issue the permit as soon as property rights have been acquired. Due to the Corps of Engineers' timeline to obligate federal appropriations, the project construction schedule, the permitting requirements from the State Water Commission, and the acreage needed to construct the diversion inlet structure and the realignment of Cass County Highways 16 and 17, acquisition of the 3 parcels is needed at this time.

Pre-acquisition activities have been ongoing for the three properties needed and land acquisition consultants have attempted to negotiate with property owners and presented offers. Dave DuToit, SRF Consulting Group, Inc., has been acting as negotiator for the land acquisition process. The property was appraised and offers were presented. At the previous meeting, Mr. DuToit stated negotiations have been ongoing for over a month, but the negotiations have not been successful. Only one property owner made a counteroffer. Mr. DuToit made another attempt to contact the property owners late afternoon yesterday, but was unsuccessful. Mr. DuToit reported to Mr. McShane negotiations are not likely to succeed at this time. Mr. McShane stated it is hopeful negotiations will continue with the property owners, even if the Board proceeds with eminent domain, and acknowledged Terry and Kristie Sauvageau have been planting and told him they have not had the time to dedicate research for a counteroffer.

Discussion was held on whether the property owners would be entitled to crop damage. Mr. Sauvageau stated crop damage could become an issue. Mr. McShane stated if crop damage does occur, property owners would be entitled to compensation, and the Board generally tries to do everything it can to allow the producer to harvest the crop; however, that consideration is separate from acquisition of the property. The Corps of Engineers would bid the project this fall, but property owners would likely have harvested their crop before construction begins. Ongoing discussions will be held over the summer regarding the construction timeline and harvest.

Mr. McShane reviewed the timeline and court process with the Board. Mr. Sauvageau asked several questions regarding the court process and financial impacts. Lukas Andrud reviewed options available to Mr. Sauvageau. The Board stated a land exchange agreement is also an option for Mr. Sauvageau if he would like to negotiate a 1031 exchange. Chairman Brodshaug stated the Board is very willing to work with property owners as long as the land is acquired prior to the deadline. It was recommended Mr. Sauvageau obtain a tax and legal representative. Mr. Sauvageau was encouraged to remain in contact with Dave DuToit to continue negotiations.

Chairman Brodshaug pointed out corrections needed in the Resolutions presented. Mr. McShane stated corrections will be made to the notary clause and the surveyor name after the notary clause in the *Permanent Right of Way Easement* attached as Exhibit B to the *Resolution of Necessity* for Object ID #1096, #1097 and #230. The date will also be corrected in the first paragraph of page 1 of the *Resolution of Offer to Purchase Permanent Right of Way Easement* for Object ID #1096.

Mr. Sauvageau inquired whether the property to be acquired would also be used for the realignment of Cass County Highways 16 and 17. Mr. Sauvageau stated he is concerned about gaining access to his field. The land acquisition team will coordinate with Cass County regarding access to his property and the Board will address any future drainage concerns.

It was moved by Manager Gust and seconded by Manager Jacobson to approve the *Resolution of Necessity* and the *Resolution of Offer to Purchase Permanent Right of Way*

*Easement* for Object ID #1096 regarding the Metro Flood Diversion Project, with corrections to the notary clause and the surveyor name after the notary clause in the *Permanent Right of Way Easement* attached as Exhibit B to the *Resolution of Necessity* for Object ID #1096, and to the date in the first paragraph of page 1 of the *Resolution of Offer to Purchase Permanent Right of Way Easement* for Object ID #1096. Upon roll call vote, the motion carried unanimously. Copies of the Resolutions are attached hereto.

It was moved by Manager Gust and seconded by Manager Loughheed to approve the *Resolution of Necessity* and the *Resolution of Offer to Purchase Permanent Right of Way Easement* for Object ID #1097 regarding the Metro Flood Diversion Project, with corrections to the notary clause and the surveyor name after the notary clause in the *Permanent Right of Way Easement* attached as Exhibit B to the *Resolution of Necessity* for Object ID #1097. Upon roll call vote, the motion carried unanimously. Copies of the Resolutions are attached hereto.

It was moved by Manager Jacobson and seconded by Manager Gust to approve the *Resolution of Necessity* and the *Resolution of Offer to Purchase Permanent Right of Way Easement* for Object ID #230 regarding the Metro Flood Diversion Project, with corrections to the notary clause and the surveyor name after the notary clause in the *Permanent Right of Way Easement* attached as Exhibit B to the *Resolution of Necessity* for Object ID #230. Upon roll call vote, the motion carried unanimously. Copies of the Resolutions are attached hereto.

It was moved by Manager Jacobson and seconded by Manager Gust to approve and authorize Chairman Brodshaug to sign the *Temporary Construction Easement* and *Quit Claim Deed* to the Fargo Gateway Center in Lot 1, Block 4, North Dakota R-2 Urban Renewal Addition to the City of Fargo regarding the In Town Levees Project. Upon roll call vote, the motion carried unanimously.

### **Adjournment**

There being no further business for the Board to consider, it was moved by Manager Gust, seconded by Manager Jacobson and unanimously carried to adjourn the meeting.

APPROVED:

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Mark Brodshaug  
Chairman

ATTEST:

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Carol Harbeke Lewis  
Secretary-Treasurer